SUPREME COURT, U.S.
FILED
OCT 25 1994
OFFICE OF THE CLERK

No. 94-207

In The

Supreme Court of the United States

October Term, 1994

GRUPO PROTEXA, S.A., A COMPANY ORGANIZED UNDER THE LAWS OF THE REPUBLIC OF MEXICO, AND CONDUX S.A. DE C.V., A COMPANY ORGANIZED UNDER THE LAWS OF THE REPUBLIC OF MEXICO,

Petitioners,

VS.

ALL AMERICAN MARINE SLIP, A DIVISION OF MARINE OFFICE OF AMERICA CORPORATION, A NEW YORK CORPORATION, AFIA, A DELAWARE CORPORATION, AND CIGNA, A DELAWARE CORPORATION,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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6 pp

On October 17, 1994, Respondents received the Supplemental Brief in Support of Petition for a Writ of Certiorari filed by Petitioners. This brief is to respond to the matters raised in Petitioners' Supplemental Brief.

I.

THE MEXICAN MINISTRY OF FOREIGN AFFAIRS' CONCERNS ARE BASED ON MISINFORMATION REGARDING THE LOWER COURTS' DECISIONS

The concerns expressed by the Mexican Ministry of Foreign Affairs would appear to be based upon misinformation regarding both the facts of the case and the specific holding of the lower courts. The letter from the Legal Adviser of the Mexican Foreign Ministry to the Legal Adviser of the United States State Department makes repeated reference to the *HUICHOL II* as a "Mexican vessel," Supplemental Brief at 1a, and places great reliance upon the "traditionally acknowledged . . . authority of States over vessels flying its flag . . . . " *Id.* at 3a. While the nationality of the vessel would appear to be irrelevant to the authority of the Mexican government to order wreck removal,[1] Respondents have never questioned the fact that the Mexican government has considerable authority over vessels flying the Mexican flag. The Mexican Foreign Ministry, however, has apparently been

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[1] The two statutes which authorize the issuance of wreck removal orders are triggered by the wreck being located in or near a port or in a "general waterway of communication," and by the wreck "affecting the port" or constituting a navigational obstacle. Article 86 of the Law of Navigation and Maritime Commerce and Article 263 of the Law of General Means of Communication, quoted in Petition at 74a and 76a.

misinformed; the *HUICHOL II* was not a Mexican flag vessel. The record is quite clear that the *HUICHOL II* was registered in Panama. Petition at 70a n.3. Accordingly, the principal basis for the Mexican Foreign Ministry's concerns is based upon misinformation regarding the facts.

The other concern expressed by the Mexican Foreign Ministry is based upon the misconception that the holding of the courts below placed a limitation on Mexico's rights under pertinent international conventions to exercise authority over the outer Continental Shelf and in the Exclusive Economic Zone. However, the Third Circuit expressly stated as follows:

> [W]e are placing no limitations on the scope of Mexican authority in the EEZ. Rather, we only are determining that the Mexican Congress itself did not establish a legal predicate for the order. Thus, instead of attempting to circumvent Mexican law, we honor that law and apply it.

Petition at 34a.[2] Thus, Mexico's concern that the lower courts' decisions in any way express a limitation on Mexico's rights to exercise jurisdiction are unfounded.

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[2] The letter makes reference to a "judicial decision recently rendered . . . in the State of New Jersey," and refers to the cause number in the district court. Thus, it may well be that the author of the letter did not have the opinion of the Third Circuit.

II.

THE MATTERS RAISED ARE IRRELEVANT

The concerns raised by the Mexican Ministry of Foreign Affairs are not only based on misinformation regarding the lower court decisions, but are irrelevant to the issues pending before this Court. The questions presented in the Petition relate to the question of whether the act of state doctrine precludes an American court from reviewing the validity of the wreck removal order under Mexican law, and whether an invalid order, in and of itself, can make removal "compulsory by law" within the meaning of the reinsurance policy at issue. The materials presented in the Supplemental Brief at most question whether the lower courts were correct in their analysis of Mexican law, and indicate that the Mexican government is concerned about the lower court decisions. Neither of these matters is relevant to the issues presented to this Court.

As discussed above, it is not at all clear that the Mexican Ministry of Foreign Affairs disagrees with the lower courts' analysis of Mexican law. In context, the statement that "the Mexican Government acted within its authority under Mexican and International Law" would appear to be based on the misconception that our courts held that Mexico was without authority to pass appropriate legislation regarding the Exclusive Economic Zone. Nothing in the letter even addresses the wreck removal statutes construed by our courts or suggests that our courts improperly construed those statutes. Even if the letter could be construed as disagreeing with the lower courts' analysis of the relevant statutes, however, this

supplemental material would be irrelevant. The Petition expressly states that "Petitioners, though not agreeing, do not challenge the court's analysis of Mexican law." Accordingly, it is simply irrelevant whether the lower courts correctly determined the content of Mexican law.

The material presented in Petitioners' Supplemental Brief probably does evidence that the Mexican government may have concerns about the lower courts' decisions. However, this too is irrelevant to the issues before this Court. First, the applicability of the act of state doctrine does not turn on whether the Mexican government is concerned with the result reached by our courts, but whether adjudication of the validity of the order "would hinder the conduct of foreign relations by the United States government." Third Circuit Opinion, Appendix B to Petition at 33a. The degree of concern expressed by a foreign government is at best a small factor in the overall balancing test required by the decisions of this Court and applied by the lower courts. Moreover, in applying the balancing test, the Third Circuit expressly stated that "we will assume without deciding that it [Mexico] has a substantial interest in this case." Petition at 33a. Petitioners do not complain that the lower courts improperly weighed the various factors, including Mexico's "substantial interest," but rather that the lower courts engaged in a balancing test at all. The extent of Mexico's concern about our courts' adjudication of the validity of the order is thus irrelevant to the issues presented.

CONCLUSION

For the foregoing reasons, Respondents respectfully submit that the materials raised in the Supplemental Brief do not raise an issue meriting this Court's exercise of discretionary jurisdiction to review the decision of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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